

SENATE RECORD VOTE ANALYSIS

106th Congress
2nd Session

Vote No. 4

February 2, 2000, 1:16 p.m.
Page S-249 Temp. Record

BANKRUPTCY REFORM ACT/Nondischargeability of Firearm-Suit Debts

SUBJECT: Bankruptcy Reform Act of 1999 . . . S. 625. Levin amendment No. 2658.

ACTION: AMENDMENT REJECTED, 29-68

SYNOPSIS: As reported, S. 625, Bankruptcy Reform Act of 1999, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. The bill is similar to the bipartisan bill considered during the 2nd session of the 105th Congress (see 105th Congress, 2nd session, vote No. 313).

The Levin amendment would make firearm manufacturers' and distributors' debts nondischargeable if those debts were related to reckless, negligent, or fraudulent conduct in the use or transfer of firearms. (Many cities have recently filed suits against gun manufacturers and distributors for legally selling firearms that have subsequently caused injury due to their illegal use. This amendment would prohibit a company found guilty in one of these suits from having any portion of a judgment against it discharged in reorganization proceedings).

Those favoring the amendment contended:

Gun manufacturers and distributors sell firearms with full knowledge that many of those firearms will be misused. People will be robbed; people will be injured; people will die. The annual mayhem caused by firearms in the United States is extreme and the American people are getting fed up with it. Many cities have recently filed lawsuits against gun manufacturers and distributors, and some of those suits are making progress. A few years ago all of these suits would have been dismissed out of hand, but after the success of the tobacco industry lawsuits the climate has changed, and gun manufacturers know it. Some manufacturers, such as Lorcin Engineering Company, Davis Industries, and Sundance Industries, have already filed for chapter 11 bankruptcy in order to avoid paying damages. They should not be allowed to get away with misusing the bankruptcy system in this fashion. The Levin amendment, therefore, would amend the bankruptcy code to make judgements against gun manufacturers and distributors

(See other side)

YEAS (29)		NAYS (68)		NOT VOTING (2)	
Republicans (1 or 2%)	Democrats (28 or 62%)	Republicans (51 or 98%)	Democrats (17 or 38%)	Republicans (2)	Democrats (0)
Chafee	Akaka	Abraham	Hutchison	Baucus	McCain ⁻²
	Biden	Allard	Inhofe	Bayh	Burns ^{-2AN}
	Boxer	Ashcroft	Jeffords	Bingaman	
	Cleland	Bennett	Kyl	Breaux	
	Daschle	Bond	Lott	Bryan	
	Durbin	Brownback	Lugar	Byrd	
	Feinstein	Bunning	Mack	Conrad	
	Graham	Campbell	McConnell	Dodd	
	Harkin	Cochran	Murkowski	Dorgan	
	Hollings	Collins	Nickles	Edwards	
	Inouye	Coverdell	Roberts	Feingold	
	Johnson	Craig	Roth	Kerrey	
	Kennedy	Crapo	Santorum	Landrieu	
	Kerry	DeWine	Sessions	Leahy	
	Kohl	Domenici	Shelby	Lieberman	
	Lautenberg	Enzi	Smith, Bob	Lincoln	
	Levin	Frist	Smith, Gordon	Robb	
	Mikulski	Gorton	Snowe		
	Moynihan	Gramm	Specter		
	Murray	Grams	Stevens		
	Reed	Grassley	Thomas		
	Reid	Gregg	Thompson		
	Rockefeller	Hagel	Thurmond		
	Sarbanes	Hatch	Voinovich		
	Schumer	Helms	Warner		
	Torricelli	Hutchinson			
	Wellstone				
	Wyden				

VOTING PRESENT (1)
Fitzgerald

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

nondischargeable. We have precedents for this type of action. For example, a few years ago Congress made the damages caused by drunk drivers and drunk boaters nondischargeable. Damages caused by firearms are every bit as serious and inexcusable. We urge the adoption of this amendment.

Those opposing the amendment contended:

Argument 1:

Firearm manufacturers make a legal, constitutionally protected product, and they make it to be used for legal purposes. Firearm distributors sell a legal product to be used for legal purposes. Crimes are committed with guns, but that fact is hardly the fault of manufacturers or distributors. Sears or K-Mart are no more at fault when a tiny percentage of the guns that they legally sell are used in the commission of crimes than Ford or General Motors are when a tiny percentage of the cars they legally sell are driven by drunk drivers who cause accidents. Our colleagues say that we should use as our model the current-law denial of bankruptcy protection for drivers who have been assessed damages for drunk driving. If our colleagues followed their own advice, then this amendment would deny that protection for criminals who have caused injuries with firearms, not manufacturers and distributors. Our fine liberal colleagues, though, are not willing to go after the criminals who are actually committing the crimes—those poor criminals are just victims of society who need help and understanding, not punishment. No, our colleagues want to go after those mean companies that "recklessly" or "negligently" sell guns even though they know that some people in America are criminals who will misuse guns when they can get their hands on them. The United States court system is infested with a lot of liberal judges who think that the law is whatever they think it should be, and we suppose that some day one of them may decide to blame the gun manufacturer instead of the criminal, but so far most of the suits that have been brought have been quickly thrown out. We certainly do not want to encourage more lawsuits or judicial activism by passing this amendment saying that if one of these unjust suits succeeds, the company will not be able to seek protection in bankruptcy proceedings.

Our colleagues, of course, know that this amendment will be defeated, but they have an anti-gun constituency that they want to please as the election approaches. If this amendment were about results instead of politics, a much more logical target would be the execrable violent "entertainment" produced by Hollywood. That entertainment has been proven time and again to have a direct link with violent behavior, particularly by children. As Jeffrey McIntyre, the legislative and federal affairs officer of the American Psychological Association described the link, "To argue against it is like arguing against gravity." Still, we are not at all surprised that Democrats would propose a political amendment aimed at the gun industry instead of at their pals in Hollywood. A repeal of the law of gravity would be more likely than an end to such election-year games by Democrats. This political amendment, obviously, should be rejected.

Argument 2:

Business bankruptcies are not the same as personal bankruptcies. Under a Chapter 11 business bankruptcy, a business' reorganization plan must receive the approval of the court and of its creditors. Plans are used to make sure that all claimants are treated fairly, and they are often used to keep a business solvent so that debts can be repaid over time. Under the Levin amendment, a single large suit could wipe out a business entirely. It would have to close its doors and sell off its assets. Over time, creditors would end up getting a lot less money, and it would be less likely that all creditors would be treated equitably. Congress has made several categories of personal debt nondischargeable, but it has not taken that route for business bankruptcies, which are fundamentally different. We think that the need for this amendment is unclear, and that its results would be uncertain. Therefore, we must oppose it.